THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.26860 of 2003

Date:02-09-2005

Between:

1. Mekala Yallaiah S/o Lachaiah, aged 42 years, Occ:Labour, R/o Kattangur Village & Mandal, Nalgonda District and another.

…Petitioners

a n d

1. State of Andhra Pradesh, Rep. By its Secretary to the Government of A.P., Revenue Department, A.P.Secretariat, Hyderabad and others

… Respondents

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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ORAL ORDER:

Petitioners, who are brothers, claiming that they are the grand children of Mekala Sayanna, a protected tenant in respect of Ac.3.17 gts of Kattangur Village, filed this petition to quash the proceedings No.EP3/713/98 dated 01-10-2003 issued by the Chief Commissioner of Land Administration, Hyderabad (second respondent) directing the Collector, Nalgonda District (third respondent), to alienate Acs.2-28gts in Sy.No.480 of Kattangur (Mandal & Village), Nalgonda District, to Kattangur Gram Panchayat (fourth respondent) on payment of market value at Rs.1,20,000/- per acre as per the provisions of Displaced Persons (Compensation & Rehabilitation) Act, 1954 (hereinafter referred to as 1954 Act).

2. The case, in brief, of the petitioners is that their grand father Mekala Sayanna was the protected tenant in respect of Acs.3-17gts in Sy.No.480 of Kattangur village and that after the death of their grand parents and their father Lachaiah, they became the protected tenants of the said land and when they made a request to the second and third respondents to grant patta in respect of that land to them, third respondent called for a report from the Mandal Revenue Officer, Kattangur, who sent a report dated 13-03-2002 stating that their grand father is the protected tenant of the said land and so they are entitled to continue as protected tenants in respect of the said land and so that land cannot be alienated to the fourth respondent.

3. Third respondent filed his counter affidavit on behalf of respondents 1 to 3 inter alia contending that Acs.3-17gts in Sy.No.480 of Kattangur village was declared as Evacuee Property and was later allotted to Sri Saraswathi Uddaram and Parashuram Uddambal, displaced persons from Pakistan, but that order was subsequently cancelled on 23-11-1954 and so the said land continued under the management of the custodian of Evacuee Property, whereat fourth respondent has been running a weekly cattle market paying rentals. Mekala Sayanna was not a protected tenant of the said land. Even assuming that he was a protected tenant, petitioners do not become protected tenants because the provisions of the A.P. (Telangana Area) Tenancy And Agricultural Lands Act, 1950 (for short 'the Act), do not apply to the lands belonging to the Central Government and since petitioners are never in possession of the said land. Petitioners submitted a petition on 02-04-2002 claiming protected tenancy rights therein, for the first time, without explaining reasons for the delay of several decades. After the Commissioner, Survey, Settlement and Land Records, issued guidelines for alienation of the Evacuee Property in the occupation of the Government institutions and local bodies, Revenue Divisional Officer, Nalgonda, submitted proposals for transfer of the said land in favour of the fourth respondent at Rs.60,000/- per acre. Report of the Revenue Divisional Officer, Nalgonda, stating that the name of Mekala Sayanna was recorded as protected tenant, cannot be taken into consideration in view of Section 102 of the Act. After examining the matter in detail only, second respondent issued the proceedings impugned alienating Acs.2-28gts in Sy.No.480 of Kattangur village to the 4th respondent at Rs.1,20,000/- per acre and fourth respondent remitted market value of Rs.3,24,000/- and symbolic possession of Acs.2-28gts was handed over through the Mandal Revenue Officer, Kattangur, on 10-12-2003 as fourth respondent is in physical possession thereof. Out of the remaining land of Ac.0-29gts, an extent of Ac.0-11gts is covered by National High Way No.9 and Ac.0-10gts is covered by encroachments and Ac.0-08gts is covered by Library and Agriculture Office. Since second respondent is the Settlement Commissioner for the Evacuee Properties under the provisions of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as 1950 Act); 1954 Act and the Evacuee Interest (Separation) Act, 1951, proceedings impugned issued by him cannot be called in question.

4. Sarpanch of the fourth respondent gram panchayat filed his counter affidavit almost in the similar lines of the counter affidavit filed on behalf of respondents 1 to 3.

5. Persons claiming to be interested in the lis came on record as respondents 5 to 7 vide orders dated 12-04-2005 in W.P.M.P.No.4906 of 2005. On their behalf, fifth respondent filed his counter affidavit taking almost similar pleas that are taken in the counter affidavit filed on behalf of respondents 1 to 3.

6. The main contention of the learned counsel for the petitioners is that since the land in question admittedly is an Evacuee Property and since the report of the Revenue Divisional Officer clearly shows that Mekala Sayanna was the protected tenant in respect of the said land, and since the provisions of the Act would apply to the evacuee property also second respondent does not have the jurisdiction to pas the order impugned. He relied on **K.SREENIVASACHARI v. CUSTODIAN OF EVACUEE PROPERTY, HYD** where it is held that

the provisions of the Act prevail over the 1950 Act in case of repugnancy and so a protected tenant under the Act, in respect of the land declared as an evacuee property, cannot be dispossessed by the Custodian under the provisions of 1950 Act. He also relied on **JAMALPUR GRAM PANCHAYAT v. MALWINDER SINGH** where it is held that a law relating to agrarian reform made by a state legislation would prevail over the 1950 Act. He relied on **DELHI ADMINISTRATION v. MADAN LAL NANGIA** where it is held that evacuee properties are not the properties of Central Government, and so, if the Government wants to use them, they have to be acquired under the provisions of the Land Acquisition Act or under Section 12 of the 1954 Act. He also relied on **B.NARASIMHA REDDY AND ANOTHER v. BHASKARA RAO JOSHI** where it is held that neither the Government nor the Custodian would become the owners of an evacuee property, as they are only Managers or statutory agents of such property. Relying on **MOHAMMED FIAZUDDIN v. CUSTODIAN E.P.A.P.** he contended that only on publication of a notification under Section 12 of the 1954 Act would the right, title and interest in the evacuee property get extinguished and would vest absolutely in the Central Government free from all encumbrances, and since there is no such notification in this case Central Government did not become the owner thereof. It is his contention that individuals who were called with the suffix 'gadu' like 'Saigadu', prior to police action in Hyderabad State started being called as 'anna' like 'Sai anna' and so the fact that the name of the grand father of the petitioners is recorded as 'Saiga' in the old revenue registers and 'Saianna' subsequently is not much of consequence.

7. The contention of the learned Assistant Government Pleader is that since the petitioners did not produce proof to show that their grand father was the protected tenant of the land and since that land has been continuously in possession of the Gram Panchayat from several decades prior to the filing of the writ petition and since the petitioners for the first time claimed right over the land only in 2002, they are not entitled to any relief.

8. The contention of the learned counsel for respondents
5 to 7 is that petitioners have no locus standi to question the proceedings of the second respondent, impugned in this petition, more so because they, except relying on the inter-departmental correspondence between the revenue officials, failed to produce any document to show that their grand father was the protected tenant in respect of the land and since the documents relied on by the petitioners show that 'Saigadu' but not 'Sayanna' was the protected tenant and since the question whether 'Saigadu' and 'Sayanna' are one and the same or not, would be a disputed question of fact, which cannot be decided in a writ petition. He relied on **GHULAM MOHAMMAD v. SAMUNDAR** and **MALLIKARJUNA DUGGET v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL** where it is held that opinions expressed in the correspondence between various officers of the Government, who had no personal knowledge, are inadmissible in evidence, in support of his contention that correspondence between the revenue officials relied on by the petitioners cannot be taken into consideration, and contended that since petitioners failed to produce the record relating to protected tenancy prepared as per the provisions of the Act and the Rules made thereunder and since in **U.P.STATE BRIDGE CORPN. LTD. v. U.P.RAJYA SETU NIGAM S.KARAMCHARI SANGH** it is held that when a statute provides a specific remedy, persons who approach the Court without availing the remedy provided by the statute cannot be granted the relief in this petition, since they failed to avail the remedy open to them under the Act and since complicated questions of fact cannot be gone into a writ petition as held in **D.L.F. HOUSING CONST.LTD. v. DELHI MUNICIPAL CORPORATION** and **GOVT. OF A.P. v. SREE PANCHA MURTHY CO-OP HOUSE BUILDING SOCIETY LTD.**. He also relied on **SYED KAZIM BAHADUR v. DISTRICT COLLECTOR, HYDERABAD** where it is held that dispute as to whether a land in question is a Government or a private land cannot be decided in a writ petition. Relying on **TAR MOHAMMAD v. UNION OF INDIA** he contended that the provisions of 1950 Act over-ride the provisions of the Act and contended that since in **ILLIYAS v. TARLOK CHAND** it is held that the custodian would be deemed to be the owner of the land free from all encumbrances, petitioners are not entitled to any relief.

9. On my direction, the learned Assistant Government Pleader produced the relevant record.

10. Points for consideration are-

i. Whether Central Government is the owner of evacuee property merely on its being declared as evacuee property?

ii. Whether the grand father of the petitioners was the protected tenant of the land in S.No.480?

iii. To what relief?

11. **POINT (i):-** In **B. NARASIMHA REDDY** case (4 supra) relied upon by the learned counsel for petitioners it is held that the object of

1950 Act is not to make the Government or the custodian of the evacuee property, the owner of the property declared as evacuee property and that notwithstanding the declaration of the property as evacuee property the same would continue to be the property of the evacuee, and that the custodian of that property acts only as a manager or statutory agent of the evacuee for due administration, preservation and management of the same. In **MOHAMMED FIAZUDDIN** case (5 supra) after considering the provisions of Section 12 of the 1954 Act it is held as follows in para-14 of the judgment -

> "In this case we are of opinion that the terms of Section 12(2) of the Act are clear that on the publication of a notification under Section 12(1) the right, title and interest of any evacuee in the evacuee property shall be extinguished and the property shall vest absolutely in the Central Government free from all encumbrances. This is unconditional and is not made to depend upon the fixation or payment of compensation under Section 13. If the legislature intended that the extinguishment of rights of the petitioner or the vesting of the property in the Central Government is conditional upon the fixation of compensation under Section 13, provision would have been made to that effect."

12. In **MADAN LAL NANGIA** case (3 supra) the Apex Court while considering the provisions of the 1954 Act, held that merely because a property is an evacuee property, it does not vest in the Central Government and that the custodian of evacuee property is a person distinct from the Central Government, and so, merely because a property of an evacuee vests in the Custodian, it does not mean that the said property vested in the Central Government.

13. In view of the ratio in the aforesaid three decisions the contention that the respondents that by virtue of the property being evacuee property, it per se became the property of the Central Government, and so by virtue of Section 102 of the Act, the provisions of the Act would not apply to evacuee properties, cannot be accepted and for the same reasons I am in complete agreement with the view expressed in **K. SREENIVASACHARI** case (1 supra) that the provisions of the Act apply to evacuee properties also.

14. The facts in **TAR MOHAMMAD** case (12 supra), strongly relied on by the learned counsel for respondents 5 to 7, are different from the facts of this case. In that case, appellants before the Supreme Court claimed to be tenants of Mohammad Hasham Abdulla, a partner of a firm, owning 689.28 acres of land in Balapur in Akola Taluk, who migrated to Pakistan. Challenging the order passed by the Assistant custodian of evacuee properties appellants before the Supreme Court filed a writ petition in Bombay High Court contenting that their tenancy cannot be terminated, which was dismissed. The apex Court confirmed the order of the High Court mainly on the ground that there is no specific finding by the authorities that they were tenants of the evacuee prior to 14.8.1947 and that they remained in possession thereof thereafter also as tenants (Section 12(1) of the 1950 Act empowers the custodian to terminate or amend the terms of any lease and proviso thereto lays down that the power under Section 12(1) of the 1950 Act cannot be exercised in respect of leases entered into before 14.08.1947 in the circumstances mentioned therein). Their contention that property covered by tenancy is not attracted by the provisions of the 1950 Act was repelled by the High Court and is also confirmed by the apex Court mainly on the ground that the alleged tenancy of the appellants has no foundation for resisting taking possession of the land. The learned counsel for respondents 5 to 7 mainly relying on the sentence reading-

> "Once Section 4(1) of AEP Act (1950 Act) stands attracted, the alleged right to tenancy also is set at naught"

contended that in view thereof it should be taken that the apex Court held that by virtue of Section 4(1) of the Act the tenancy of the petitioners, if any, stood extinguished. I am unable to agree with that contention, as it is only a part of the paragraph reading-

> "The High Court reasoned that by operation of Section 4(1) of the AEP Act, the pre-existing law stands excluded by virtue of the non obstante clause. Thereby, tenancy rights also stand extinguished by operation of the non obstante clause. Once Section 4(1) of the AEP Act stands attracted, the alleged right of tenancy also is set at naught; nor does it amount to encumbrance. In consequence, the alleged right to tenancy has no foundation for resisting taking possession of the land. Even the order passed by the Tahsildar and Assistant custodian has not been made part of the record which was impugned in the High Court. Under these circumstances, there is no case warranting interference."

So, it is clear that the apex Court dismissed the appeal merely on the ground that the appellants before it failed to establish their tenancy, by quoting what the High Court observed, but it by itself did not decide the rights of tenants vis-a-vis Section 4(1) of the 1950 Act. In fact, a constitution bench of the apex Court in **Malwinder singh** case (2 supra) held that the State legislature is competent to make law relating to agrarian reforms even if it effects the land vested in the Central Government or the custodian to evacuee property because State Government only but not the Central Government can make laws relating to 'agricultural lands' falling in entry18 of List II of the Seventh Schedule to the Constitution. For that reason and since 1950 Act came into force on 17-04-1950, and since the Act came into force on 10-06-1950 subsequent to the coming into force of 1950 Act, and since a proviso to Section 12 of 1950 Act clearly lays down that in respect of the leases granted before 14-08-1947 custodian cannot exercise the powers conferred upon him by Section 12 (1) of the Act, unless the conditions mentioned therein apply, protected tenants under the Act even in respect of an evacuee property would not lose their right of protected tenancy consequent on the property being declared an evacuee property. Therefore, respondent cannot, by relying on Section 102 of the Act, contend that the provisions of the Act have the application to Evacuee property, more so because Section 104 of the Act clearly lays down that the Act and any Rule, Order or notification made or issued thereunder shall have effect not withstanding any thing inconsistent therewith contained in any other enactment with respect to matters enumerated in List II in the

Seventh Schedule to the Constitution of India. The point is answered accordingly.

15. **Point (ii):-** Now the question is whether petitioners who claim themselves to be the grand children of Sayanna are the protected tenants of evacuee property of Acs.3-17gts in S.No.480 of Kattangur by virtue of Section 40 of the Act which lays down the rights of protected tenancy are heritable on the same terms and conditions on which the protected tenants were holding the land at the time of his death.

16. The contention of the learned counsel for respondents 5 to 7 is that since petitioners failed to produce the Certificate in Form No.VI (Protected Tenancy Certificate) and since as per Section 35 of the Act question whether a person is or not a protected tenant as per Section 34 of the Act in respect of a land has to be decided by the Tahsildar (Mandal Revenue Officer) in the manner prescribed and since no abstracts or certificates of tenancy in Form
Nos.5 and 6 as per the provisions of Hyderabad Tenancy and Agricultural Lands Rules of 1950 made under Sections 35 and 37 of the Act are produced by the petitioners to show that Mekala Sayanna was the protected tenant in respect of the aforesaid land, and since copy of the Khasra Pahani produced by the petitioners shows the name of Mekala Saiga, and since there is nothing on record to show that 'Saiga' and 'Sayanna' are one and the same persons, petitioners are not entitled to any relief.

17. File produced by the learned Assistant Government Pleader shows that on 01-04-2002 petitioners submitted a representation to the second respondent inter alia alleging that they are landless poor people belonging to Scheduled Caste community and that their grand father Mekala Sayanna was the protected tenant in respect of Acs.3-17gts in S.No.480 of Kattangur village and after the death of their grand father, Lachanna, son of Sayanna, who is their father was enjoying that land and that after the death of their father, they with their mother Yellamma and grand mother, Durgamma, left the village due to drought, for eking out their livelihood and taking advantage of their absence and the land being adjacent to the road, cattle shandy is being held there and though they sought for a patta in respect ofthat land from the Mandal Revenue Officer, Kattangur, the Revenue Divisional Officer, Nalgonda, and the Collector, Nalgonda, they did not take any steps on their application, and since they came to know that the said land is being sold away to others, they are making a representation to him for grant of patta in respect of that land. Xerox copies of the certified copies of the documents produced along with the said application are, the record relating to protected tenancy of Kattangur village for the year 1951, which shows that Gulam Ali is the pattedar/owner of Acs.3-12gts in S.No.480 of Kattangur village and that Makala Saiga is the protected tenant in respect thereof. It contains an endorsement in Urdu with date 28/9 & 29/10/51. Since I do not know Urdu, I requested the learned counsel for the petitioners to read and translate the same. According to him, the endorsement is "*final thaktese mukhabla kiya gaya durusth hai* (compared with the final settlement and found correct)". The other document is part-II extract of tenancies, containing the details of occupation in form No.1 for 1360 fasli, which shows that Mekala Saiga was the lessee in respect of Acs.3-12gts in S.No.480 named Dandubata Dakshinam Chalka, and the rent is Rs.4-0-0. It contains the following endorsement by Patwari.

[image]

and it also contains a Urdu endorsement by Tahsildar, Nalgonda Taluq, dated 06-06-1951 which according to the learned counsel for the petitioners is "*Aaj ki Thareekh me Taktha Haja Musaddique kiya gaya* (this statement is certified today)". The next document is the Khasra Pahani for the year 1954-55, which shows that Acs.3-17gts in S.No.480 of Kattangur village is in the patta of Gulam Ali and that Custodian is the pattedar thereof and that Mekala Saigadu raised 'Sajja Jonna' therein. The next document is the pahani for the years 1955-56, 1956-57 and 1957-58, which shows that the land of Acs.3-17gts in S.No.480 is in the custody of Custodian and that Mekala Sayanna raised 'Sajja Jonna' in
Acs.3-12gts during those years. The next document is the Pahani for 1960-61, which shows Mekala Sayanna was in possession of Acs.3-17gts in S.No.480 of which custodian is the pattedar.

18. The above representation of the petitioners was marked by the D.R.O. on 03-05-2002 to the concerned section for further action. Thereafter the Revenue Divisional Officer through L.R.No.G/2164/94 dated 30-04-2002 sent his report to the Collector, Nalgonda, informing him that Mandal Revenue Officer, Kattangur, reported that Mekala Saiga (Sayanna) who was the protected tenant was in possession and enjoyment of the said land is in his own right, and that the final record of protected tenancies published in 1951 was verified, wherein the said Sayanna is recorded as protected tenant of Gulam Ali, the landholder, and the same position is reflected in the

Khasra Pahani for the year

1954-55, and that the legal heirs and successors of Sayanna, namely Mekala Yellaiah and Mekala Sambayya (petitioners) who are the surviving descendents of the said Sayanna applied for transfer of ownership of the land under Section 38-E of the Act, and so the Gram Panchayat may not legally be entitled to claim the entire land in S.No.480 either by prescription or otherwise, and forwarded the record of enquiry to the Collector along with the relevant record. Thereafter Collector, Nalgonda, addressed a letter to the Secretary to Chief Commissioner of Land Administration in Lr.No.D7/12319/96-Vol.II dated 18-05-2002 informing that S.No.480 of Kattangur Village was declared as Evacuee Property and was allotted to Sri Saraswathi Uddaram but the allottee did not occupy that land and that the Gram panchayat, Kattangur, is running weekly cattle shandy in the said place, and that out of the said Acs.3-17gts, Ac.0.08gts is covered by Library building and Agricultural Seed Godown, Ac.0-10gts is covered by National Highway, Ac.0-11gts is encroached by private individuals and that the remaining Acs.2-28gts is under the occupation of Gram Panchayat, Kattangur, and so he is proposing to transfer that extent to the Gram Panchayat at Rs.1,20,000/- per acre, but in the meanwhile petitioners submitted a representation stating that their grand father was the protected tenant in respect of the said land, and that he examined the issue with reference to records, and since there are instructions from Government of India to transfer the evacuee land in occupation of protected tenants, after collecting compensation from them in accordance to local tenancy law, inasmuch as the said land is in possession of the Gram Panchayat since a long time, and since the Act has no application to the lands of the Central Government, in view of Section 102 of the Act, and since petitioners who are not in possession of the land from several years which is being used as a cattle market from several years, made a claim to that land only on 25-01-2002, after proposals for transfer of land to the Gram Panchayat were submitted, their claim need not be taken into consideration as they are not in possession from the last 46 years. When the Collector received a communication from the office of the second respondent why no notice was issued to the protected tenants regarding payment of rent etc., and to follow the guidelines issued in Circular No.4, by CCLA's Ref.No.EP3/713/98 dated 26-03-2002, he (the Collector) addressed a letter to the Revenue Divisional Officer, Nalgonda, in his Lr.No.D7/12319/96-Vol-2 dated 30-07-2002 directing him to verify the Protected Tenancy Register (Final Record of Tenancy) and Section 38-E file of Kattangur village together with work sheet of tenants and provisional list, and from which year the Gram Panchayat was using the balance extent of Acs.2-28gts for running a cattle market and whether Mekala Sayanna was recorded as protected tenant and if so why he was not considered for issuance of Ownership Certificate under Section 38-E of the Act along with other occupants in the Evacuee Property. Since no reply was received for that letters, reminders were issued on 31-08-2002, 25-9-2002 and 31-10-2002. On 12-11-2002, the Revenue Divisional Officer, Nalgonda, informed the Collector that the Protected Tenancy Register is not available in the Office of the Mandal Revenue Officer, Kattangur, and that the Gram Panchayat, Kattangur, is using the land for Shandy since 1963 and that a perusal of ARDO(LR) Nalgonda file No.E/182/75 reveals that S.No.480 does not find place in the Provisional or Final List prepared by the then ARDO(LR) Nalgonda. Thereupon the Revenue Divisional Officer, Nalgonda, addressed a letter to the Mandal Revenue Officer, Kattangur, on 05-11-2002 calling for certain particulars to enable him to submit a report to the Collector. Thereupon, the Mandal Revenue Officer, Kattangur, addressed Lr.No.A/633/2002 dated 07-11-2002 to the Collector informing that the Protected Tenancy Register of Kattangur village is not traceable and on verification of the records it is noticed that the said register was sent to ARDO(LR) Office, Nalgonda, vide her office Lr.No.B/3342/88 dated 13-09-1993 and obtained acknowledgement and that the worksheet of the tenants and provisional list of 38-E file are not traceable in the office but copies are available in the Revenue Divisional Officer's Office, Nalgonda, and that land in S.No.480 to an extent of Acs.2-28gts is Evacuee Property and that the same is in the possession of Gram Panchayat, Kattangur for holding Shandy on every Saturday, and that Pahanis from 1954 to 2000 reveal that from 1954-55 to

1960-61 Mekala Sayanna is recorded as cultivator of the land in S.No.480, of which custodian is recorded as the pattedar, and that in pahanis from 1962 to 1999 and 2000 it is noted that 'pasuvula santha' is being held therein by the Gram Panchayat and that Mekala Sayanna whose name is not recorded as Protected Tenant in the Pahanis for the years 1962 to 1999 and 2000, was not in possession of the said land. A copy of the letter dated 17-8-1964, received by the Tahsildar, Nalgonda, from the District Collector, Nalgonda, also was sent as an enclosure. In that letter, the Collector requested the Tahsildar to take necessary action for disposal of the land, in accordance with the instructions of the Regional Settlement Commissioner, Bombay, in L.No.32471 dated 6-5-64, communicated to all Tahsildars regarding disposal of evacuee property Rural Agricultural property to local tenants, if the land is an evacuee property. Thereafter the Collector through his communication dated 16-12-2002 requested the Revenue Divisional Officer, Nalgonda, to find out as to how certified copies could be issued from Mandal Revenue Officer's office twice, subsequent to the sending of the file to ARDO, Nalgonda. Since no reply was received to that letter, several reminders also were sent. But, no reply seems to have been received by the Collector. But, through his letter dated 07-04-2003 in D.O.Lr.No.D7/12319/1996 the Collector informed the Commissioner of Panchayatraj and Rural Development, Hyderabad, that the Revenue Divisional Officer, Nalgonda, submitted proposals for allotment of the land to an extent of Acs.2-28gts in favour of Gram Panchayat at Rs.60,000/- per acre and that the Joint Collector inspected the land and proposed to collect Rs.300/- per square yard as market value and that the Gram Panchayat expressed its inability to pay Rs.300/- per acre (sic) and hence the price was negotiated and fixed at Rs.1,20,000/- per acre instead of Rs.300/- per square yard, and since tenancy records are under verification in respect of the application made by the petitioners, he would sent his report after receiving the report from the Revenue Divisional Officer. Through Lr.No.E/4330/91 dated 27/08/2003 the Revenue Divisional Officer informed the Collector as follows:

But, in his D.O.Lr.No.D7/12319/1996 Dt.11-09-2003 addressed by the Collector to the second respondent it is stated-

Consequently, second respondent issued the proceedings impugned in this petition. In view of the communication dated 27-08-2003 of the Revenue Divisional Officer extracted above, prima facie, protected tenancy of their grand father, claimed by the petitioners, seems to be correct, and so the contention of the respondent that records are tampered with, prima facie, may not be correct. Whether the name of the grand father of the petitioners is recorded in the Protected Tenancy Register or not is a question of fact. If the records reveal that fact, it does not become a disputed fact. Since the letter of the Revenue Divisional Officer dated 27-08-2003 extracted above clearly shows that records were available at the time of issuance of the certificates, and that the protected tenancy claimed is true, question whether the grand father of the petitioners was a protected tenant or not, cannot said to be a disputed fact. In view thereof, **GHULAM MOHAMMAD** case (6 supra) and **MALLIKARJUNA DUGGET** case (7 supra) relied on by the learned counsel for respondents 5 to 7 have no application to the facts of this case.

19. So, I hold that the grand father of the petitioners was the protected tenant of the land in S.No.480. The point is answered accordingly.

20. **Point (iii):-** Petitioners, admittedly, are not in possession of the land from several decades. Even according to the representation submitted by them, they, with their grand mother and mother, left the village for eking out their livelihood, and taking advantage of their absence, cattle shandy is being held in that land from several decades prior to their claim in respect of that land. The reports of the Mandal Revenue Officer and other documents also clearly establish that from several decades prior to the representation of the petition, S.No.480 is being used for non-agricultural purpose and even according to the petitioners there are permanent structures constructed by third parties.

21. The contention of the learned counsel for petitioners is that two houses in S.No.480 belong to the petitioners and that cattle Shandy is being held in a part of the area but not the entire area and so petitioners are entitled to recover possession of the property in their capacity of the grand sons of the protected tenant being his lineal descendants. In respect of that claim the remedy of petitioners, if any, is to file a petition before the concerned authorities under the Act for restoration of the possession. The fact that respondents permitted sale of land in favour of Gram Panchayat, Kattangur, may not be of consequence because no one can convey a better title than what he has. So, if the government is not the owner of the land in S.No.480 or if petitioners, being the grand sons of the protected tenant, acquire right of protected tenancy therein the sale in favour of the gram panchayat would not affect their right. The point is answered accordingly.

22. For the above said reasons this writ petition is disposed of with a direction to the petitioners to approach the authorities under the Act to redress their grievance. Parties are directed to bear their own costs.

(C.Y.Somayajulu, J.)

Date: 02-09-2005

Cvrk